

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RUBEN YAGUDAYEV,

Petitioner,

-v-

10-CV-6673JWF

ORDER

ERIC HOLDER, Attorney General
of the United States, et al.,

Respondents.

Petitioner, Ruben Yagudayev, filed a petition for a writ of habeas corpus relief, pursuant to 28 U.S.C. § 2241, challenging his continued administrative custody/detention pending removal. (Docket No. 1). Petitioner was ordered removed by an Immigration Judge on or about September 16, 2010, and did not appeal the order of removal to the Board of Immigrations Appeal. His order of removal was thus deemed final as of the date of the Immigration Judge's order of removal. (Docket No. 1, Petition, ¶¶ 15-16). He was taken into custody of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement ("ICE") on or about March 15, 2010. (Petition, at ¶ 13). Respondents have filed a motion to dismiss the petition as moot inasmuch as petitioner has been released from administrative detention pending removal pursuant to an Order of Supervision, dated December 15, 2010. (Docket No. 5, Motion to Dismiss, Affidavit of Gail Y. Mitchell, sworn to January 24, 2011, ¶ 4, and Exh. A--Order of Supervision).

Accordingly, in light of the fact that petitioner has been released from administrative detention, the respondents' motion to dismiss the petition is granted and the petition is dismissed. See Masoud v. Filip, NO. 08-CV-6345-CJSVEB, 2009 WL 223006 (W.D.N.Y., January 27, 2009) (confirming Report and Recommendation of U.S.M.J. Victor E. Bianchini) (petition for a writ of habeas corpus filed under 28 U.S.C. § 2241 seeking release from detention pending removal moot upon release of petitioner from detention pursuant to an Order of Supervision).

The Clerk of the Court is directed to forward a copy of this Order to petitioner at the address set forth in the Order of Supervision: 61-54 77th Place, Middle Village, New York 11379.

The Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this judgment would not be taken in good faith and therefore denies leave to appeal as a poor person. Coppedge v. United States, 369 U.S. 438 (1962).

Petitioner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within thirty (30) days of the date of judgment in this action. Requests to proceed on appeal as a poor person must be filed with the United States Court of Appeals for the Second Circuit in accordance with the requirements of Rule 24 of the Federal Rules of Appellate Procedure.

IT HEREBY IS ORDERED, that the petition is dismissed; and

FURTHER, that leave to appeal as a poor person is denied.

SO ORDERED.

S/ MICHAEL A. TELESKA
MICHAEL A. TELESKA
United States District Judge

Dated: January 31, 2011
Rochester, New York